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Supreme Court of the United States

OCTOBER TERM, 1953

No. 23

WALTER J. KOWALSKI,

Petitioner,

v.

ALBERT B. CHANDLER, individually and as Commissioner of Baseball, *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF FOR PETITIONER

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BRIEF FOR PETITIONER

Opinions Below

This case arises on the grant of certiorari to the United States Court of Appeals for the Sixth Circuit on May 25, 1953 (R. 30).

On February 20, 1953, the Court of Appeals for the Sixth Circuit affirmed the order and judgment of the United States District Court for the Southern District of Ohio, Western Division, entered on January 25, 1952 (unreported), dismissing petitioner's complaint on respondents' motion directed to the said complaint prior to service of responsive pleading (202 F. (2d) 413; R. 28-29).

Jurisdiction

In consequence of the injury inflicted upon petitioner in his trade or business by respondents' conspiracy in restraint of trade and their overall and internal monopolies, petitioner brought this action for treble damages in pursuance of Section 4 of the Clayton Act, 38 Stat. 731, Section 4 (38 Stat. 731; 15 U. S. C. A., Section 15), on June 21, 1951 in the United States District Court, Southern District of Ohio, Western Division (R. 1).

Respondents moved to dismiss the petitioner's complaint on the grounds that the Court lacked jurisdiction over the subject-matter of the cause of action and that the complaint, and each cause of action therein, failed to state a claim against the defendants upon which relief could be granted (R. 22-25).

The District Court granted the respondents' motion and dismissed the plaintiff's, petitioner's action on January 25, 1952 (R. 25-26). On February 20, 1952, plaintiff, petitioner, filed notice of appeal to the United States Court of Appeals for the Sixth Circuit from the order of dismissal of the District Court (R. 26). On February 20, 1953, the Court of Appeals affirmed the order of the District Court dismissing petitioner's action (R. 28-29).

The petition for certiorari was filed March 20, 1953.

This Court granted certiorari May 25, 1953 (345 U. S. 963) indicating probable jurisdiction under 28 U. S. C. A., § 1254(1).

Statutes Involved

(a) Statutes Giving Jurisdiction:

Petitioner asserts that the defendants are in violation of the Anti-Trust Law, 26 Stat. 209, Par. 1, 15 U. S. C. A., Section 1:

"Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: * * *"

Sherman Anti-Trust Law, 26 Stat. 209, Par. 2, 15 U. S. C. A., Section 2:

"Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, * * *."

Sherman Anti-Trust Law, 26 Stat. 209, Par. 3, 15 U. S. C. A., Section 3:

"Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. * * *"

Clayton Act, 38 Stat. 731, Section 6, 15 U. S. C. A., Section 17:

"The labor of a human being is not a commodity or article of commerce. * * *"

Clayton Act, 38 Stat. 731, Section 4, 15 U. S. C. A., Section 15:

"Any person who shall be injured in his business or property by reason of anything forbidden in the

antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover three-fold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee."

(b) Constitutional Provisions Relied Upon:

Constitution of The United States, Article I, Section 8, par. 3:

"The Congress shall have Power * * * 'To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.'"

Amendments, Article XIV:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

(c) Charter of The United Nations:

Chapter IX:

"Article 55. With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

a. higher standards of living, full employment, and conditions of economic and social progress and development;

b. solutions of international economic, social, health, and related problems; and international cultural and educational co-operation; and

c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

"Article 56. All Members pledge themselves to take joint and separate action in co-operation with the organization for the achievement of the purposes set forth in Article 55."

Statement and Definition of Terms

Petitioner is a citizen and resident of the United States and of the State of New York. He is a professional baseball player capable of holding a position upon a club in Organized Baseball (R. 2). The respondents are officials and members of Organized Baseball (R. 2-3). Organized Baseball consists of the professional baseball clubs organized into leagues within the United States, the Dominion of Canada, Cuba and certain cities and towns in the Republic of Mexico (R. 3).

It is alleged and may readily be proved that Organized Baseball is governed by The New Major League Agreement, Major League Rules, Major-Minor League Rules and the National Association Agreement. The National League and the American League comprise the Major Leagues of Organized Baseball. The National Association of Professional Baseball Leagues comprises the

Minor Leagues of Organized Baseball (R. 3). The eight clubs in the National League and the eight clubs in the American League (R. 3) engage annually in scheduled games within their respective Leagues for profit which is derived by charging fixed prices for tickets of admission to the members of the public and the fulfillment of these schedules requires the systematic crossing of state lines by the clubs (R. 4). The training and preparations for the season's schedules include the interstate transportation of the clubs (R. 5). The Major League clubs obtain annually a substantial portion of their income from the sale of the seasonal rights to broadcast and telecast their games to sponsors and to radio and television companies (R. 5). Many of the clubs in the Minor Leagues make similar sales of these rights (R. 6). Larger sums are received for the radio and television rights for the annual All Star or "Dream Game" between selected players of each Major League than are derived from the public for tickets of admission (R. 6). The World Series played annually between the pennant winning clubs of each Major League yielded, in 1950, $975,000 from the sale of broadcasting and telecasting rights; an amount around $953,669.03 was received from the public for tickets of admission for the Series in that year (R. 6).

Petitioner alleges in two separate causes of action (R. 21-22) that the respondents are in violation of the Sherman Anti-Trust Act (26 Stat. 209; 15 U. S. C. A., Sections 1, 2, 3) and the Clayton Act (38 Stat. 731; 15 U. S. C. A., Sections 15 and 17).

It is alleged that Organized Baseball maintains its monopoly over the exhibition of professional games within its parks (R. 4) and over radio and television for profit in interstate and foreign commerce (R. 5-6) through its exclusive control over the market for professional players (R. 6). The players are employed by their respective clubs under uniform contracts (R. 6). These contracts

contain a provision conferring upon the employing club a compulsory reserve clause for the player's services upon the expiration of his employment (R. 6). This reserve clause compels the adherence of the player to his club under the sanction of a blacklist and forces the player to remain the property of the club even without any existing present agreement (R. 16); and through the reciprocal recognition of its binding force pursuant to agreement with an independent League in Mexico (R. 17); and through the inclusion within Organized Baseball of a League in Canada that was formerly independent (R. 17).

The uniform contract contains an assignment or involuntary transfer clause (R. 7). (The New Major League Agreement, adopted January 12, 1921, did not prohibit "farming" (R. 13), *i. e.*, the ownership of Minor League clubs by Major League clubs (R. 12).) The Major League clubs own or control farms in the form of Minor League clubs. They use these farms as schools to train players or to keep them for future use. They also sell these players.

Salary ceilings for clubs throughout the Minor Leagues are the rule (R. 14-15). The players on a "farm" are subject to assignment or involuntary transfer by its Major League club in conjunction with the reserve clause (R. 15).

The Minor Leagues are composed of two "AAA" Leagues (R. 14), the Pacific Coast League having attained Open Classification since this action was commenced; two "AA" Leagues (R. 14); four "A" Leagues (R. 15); nine "B" Leagues; thirteen "C" Leagues and nineteen "D" Leagues (R. 15).

Under the Major-Minor League Rules (R. 3) a player is subject to annual selection by a club in a higher classification than his own (Major-Minor League Rules

5(g) [Hearings Before The Subcommittee on Study of Monopoly Powers of The Committee on The Judiciary—House of Representatives—82nd Congress—First Session, 1157 at 1163—hereinafter referred to as "Hearings"]).

Petitioner's Story

Petitioner while under twenty-one signed his original uniform or standard contract with the Lockport, New York, Club of the "D" Pony League where he played one season for no more than $150 per month (R. 18). Defendant, Brooklyn National League Baseball Club, Inc., thereafter purchased the assignment of his contract and he played in its organization in 1947 with Kingston, New York, in the "D" North Atlantic League for no more than $150 per month (R. 18). For the season of 1948, petitioner's contract was assigned by the Brooklyn organization to the Pueblo, Colorado, Club of the "A" Western League (R. 18). Petitioner played ultimately within the Brooklyn organization for its Three Rivers, Quebec, Club in the Dominion of Canada in the "C" Canadian-American League at a salary of $235 per month (R. 18, 19, 20). Petitioner's name was kept off the unrestricted draft list for 1947 and 1948 by the respective assignments of his contracts to the "A" League clubs of Pueblo for 1948 and Greenville for 1949 (R. 20).

For 1947, no club outside of the Brooklyn organization in an "A," "B" or "C" League had the opportunity to draft or select petitioner; and for 1948 all like outside clubs were deprived of such opportunities. This situation reduced materially petitioner's chances for reaching the Major or higher Minor Leagues. Petitioner's highest salary in organized baseball was $265 a month (R. 20, 21). Each Major League "Farm System" was a monopoly within a monopoly (R. 21).

At this point in the story, an illustration of the reserve clause is appropriate:

Assume "A" is a player; he signs with Brooklyn. Under the reserve clause Brooklyn can:

Assign him to any club belonging to it anywhere within or without the United States.

At the conclusion of one year it can tell "A" how much it will pay him for the next; if "A" does not approve of the amount, "A," though still unsigned, is still, under the reserve clause, the chattel of Brooklyn; and he may not play anywhere in the professional organization—which means anywhere for pay—without signing at Brooklyn's terms. In short, once the property of Brooklyn, "A" can play nowhere (and for no price), except that offered by Brooklyn. His right to deal with anyone is forever barred unless Brooklyn sells him. In that sense he is "sold"; for he need be under no contract at all, yet he may be sold. The club buying "A" is the only club for whom or at whose direction he can play; and he must accept its terms of pay or be forever barred through blacklist from playing at his profession.

At bar, the petitioner was kept at ceiling pay of the low price Minor League "Farm Clubs" belonging to Brooklyn; and he was kept from being obtained in accordance with certain draft or selection rules of the respondents by Major League clubs paying higher salaries. The short point is, that petitioner was not given a fair opportunity for promotion; could not obtain any real promotion from the club of which he was a chattel; and for a definitive period was absolutely deprived of any opportunity to become the chattel by draft, sale or assignment of any other club paying or willing to pay commensurately with his ability.

And all this without the necessity of the Brooklyn club having any contract with the petitioner. He was tied to

it in perpetuity, for the sole reason that he had originally been purchased by Brooklyn from a club called Lockport with whom he had signed for a short period of time while still under twenty-one.

Question Involved

The respondents by organizing themselves into leagues of interlocking ownership, have control, as a chattel, of the players; vis a vis the players signed or unsigned, and sell them as chattels. They obtain munificent and rapidly growing revenues from radio and television broadcasting activities of such players' services. The uniform or standard contracts (R. 6) of the Major and Minor Leagues regulate their respective players in appearances or performances for radio and television and other media in the sole interest of the particular player's club (Major League Contract 3(c) [Hearings, 1248, at 1249]; Minor League Contract, 4(c) [Hearings, 1254 at 1256]). Respondents exercise their exclusive control in respect of the professional games; over the players' services; and over radio and television without the liability to any control thus far by Court or Congress, on the sole ground claimed by them, that they are not engaged in interstate commerce. Their claim is that the substantial revenue derived from radio and television is not interstate commerce. They claim to be immune from interstate commerce despite the fact that the interstate activities of organized baseball in all of its phases have progressively widened during the past thirty years and more since *Federal League Club* v. *National League*, 259 U. S. 200.

The questions involved are:

1. Is Organized Baseball immune from the Sherman Act?

2. Is it engaged in commerce?

3. Are the facts in this record, conceded to be true, different in degree or kind from those adjudicated in *Federal League Club* v. *National League*, 259 U. S. 200?

The Court below held that the respondents were not engaged in commerce, and in connection with the substantial revenues derived by the respondents from broadcasting and telecasting adjudicated that the *Federal League Club* case was *stare decisis*. Although broadcasting and telecasting of the games did not exist in 1922, the respondents claim that Western Union furnished a wire service, sometimes transmitting over telegraph the scores by innings and sometimes play by play descriptions.

The amounts of money paid by Western Union were really insignificant and the entire relationship was not referred to by Mr. Justice Holmes.

The Court below in the case at bar nevertheless, in accepting the analogy between wire service and broadcasting and telecasting (202 F. 2, *supra*, 414; f. 36), relied upon the minority opinion of Judge Chase in *Gardella* v. *Chandler*, 172 F. 2 402, to the effect (404):

> "So far as I can perceive, the difference in the method of transmission is without significance."

The consequence of the reasoning of the Court below is:

> That whatever advance science has made or will make in the direct transmission of the sights and sounds of the game through radio and television, and whatever use the defendants may make of these advances for commercial gain—either by selling the rights to use them for advertising purposes, or selling the club franchises as such to producers and manufacturers—Organized Baseball as the source for these media affords *absolute immunity* from regulation, under the anti-monopoly statutes and the Commerce Clause.

POINT I

The operation of the respondents is commerce. It is interstate commerce.

A.

The facts at bar before this Court are plainly distinguishable from the facts in *Federal League Club* v. *National League*, 259 U. S. 200.

BASEBALL FROM 1869 TO 1922.

We submit that the background of the *Federal League Club* case, decided in 1922, is pertinent to our contention that the respondents have expanded their activities and mode of operation.

Between 1869 and 1922, Professional Baseball had become thoroughly organized. The National League was founded in 1876, and from 1892 through 1900 dominated the professional game as the sole Major League.

At the advent of 1900, it had assumed its current number of eight rival clubs, each owned by a competing corporation. Six teams represented respectively a large city. The New York Giants and The Brooklyn Dodgers were identified with the former separate municipalities on Manhattan and Long Island.

The National League had previously succeeded in maintaining systematically, through many successive seasons, the exhibitions of the baseball games between its clubs. Each club engaged in an equal number of contests with every opposing club in the League. The club with the highest percentage of victories won the National League pennant at the end of each season.

Certain small cities organized its similar leagues. They were Minor Leagues. In 1901, Byron Bancroft Johnson, a powerful Minor League President, founded the American

League with the aid of veteran managers and experienced players from the National League. This "Junior Circuit" availed itself of the interest in baseball, established during twenty-five years by the National League, in the localities of Boston, New York, Philadelphia, Chicago and St. Louis. The fans of Cleveland and of Washington—abandoned by the National League in reducing its Circuit from twelve to eight after 1899—were now gratified by its new Major League clubs. Detroit—with memories of a National League Championship Club in the late '80s—was again included in the competing American League eight club circuit.

The old and new Leagues were at dagger's point for two years and treated each other as competitors. Then they arrived at a truce for 1903; and in Cincinnati on September 11 of that season, combined under the "National Agreement." This Constitution of Baseball was promptly ratified by the Minor Leagues' Organization, which thereby recognized and accepted the jurisdiction of the National Commission, the three man body provided by this National Agreement for the government of all of the professional game. They then became "Organized Baseball."

August Herrmann, President of the Cincinnati Exhibition Company, owner of the Cincinnati Club of the National League, was Chairman of the Commission. The other members were the Presidents of the National and of the American League.

With the season of 1905, the National Commission took full charge of the World Series. This became an annual contest of seven games between the pennant winners of the National and American Leagues to determine a champion of professional baseball.

A break down of authority of Organized Baseball arose from the independent Federal League which competed with the Majors throughout 1914 and 1915.

The uniform players' contract, as revised by the National Commission, acted as a sufficient deterrent to the engagement of players by an outsider. This induced the Federal League early in 1915 to institute an action, *Federal League* v. *August Herrmann, et al.*, for an injunction under the Sherman and Clayton Acts against the leading representatives of Organized Baseball, in the Northern District of Illinois, Eastern Division, "No. 373 in equity." The trial took place before Judge Landis in January of that year; he reserved decision, and the parties negotiated a proposed settlement in the following December after waiting eleven months for a decision (Organized Baseball—Report of The Subcommittee on Study of Monopoly Power of The Committee on The Judiciary, House of Representatives, 82nd Congress, Second Session [hereinafter referred to as the Report] 56-57). The members of the Baltimore Federal League Club, alone, were dissatisfied over the refusal of the National League owners to permit them to purchase the franchise of the St. Louis Cardinals and to shift the franchise to Baltimore (*id.*).

The settlement as entered before Judge Landis, without prejudice to the rights of the Baltimore Club (*id.*), provided for payments to the other Federal League backers of $600,000 for the reinstatement of all the players who had "jumped" to the Federal League clubs; and the assumption by Organized Baseball of the obligations of their contracts (Report, 56-57; *Federal League Club* v. *National League*, 259 U. S. 200, Record On Appeal, ff. 286, 287, 288; 382-383; cf. Minutes of Waldorf-Astoria Meeting, *id.*, Appendix to Brief of defendants-in-error, 163-179; J. G. Taylor Spink, Judge Landis and Twenty-Five Years of Baseball (38-40).

Besides, the St. Louis Federals were allowed to buy out "The Browns" and The Chicago Federals to buy out "The Cubs" (Id., 38; Report, 56-57).

B.

The Federal League Club Case.

This was the background for the subsequent action brought by the Baltimore Club against both the representatives of Organized Baseball and the compensated backers of the defunct Federal League, for treble damages under the Sherman and Clayton Acts. The gravamen of the complaint was the monopolistic nature of the reserve clause as employed by Organized Baseball. The closest scrutiny of this complaint has failed to reveal any allegation as to wire service, or that sale of this service by the National League for $18,000 annually from 1913 to 1917, inclusive, placed Organized Baseball during the days of the National Commission under the commerce clause.

Upon the trial undisputed documentary evidence and the direct testimony of Mr. Goldman, an official of the plaintiff club, united to eliminate also any charge or proof that the Major League clubs then owned Minor League clubs as "Farms" or subsidiaries (*National Agreement*, Article VI, section 4; *Federal Club* v. *National League*, *supra*, quoted in the Record on Appeal, f. 141; see *id.*, f. 208 for the above-cited testimony of the witness, Goldman). The investigations of the Congressional Subcommittee have confirmed the absence in 1922 of the current issues arising from farming (Report, 188).

At this point, no better authority can be found than former Senator George Wharton Pepper, who argued successfully the *Federal League Club* case before this Court. In his autobiography published in 1944 under the title "Philadelphia Lawyer", he stated in part in reference to that action (p. 357 *et seq.*):

> "A third round became necessary, however, because the Federal League at once appealed to the Supreme Court of the United States.

"While this appeal was pending the opportunity came to me to review and revise the many contracts which hold Organized Baseball together. These included the agreements which determine the relation of player to club, of club to club, of club to league, of league to league and of major league to minor league. The several existing contracts had been amended from time to time and the result was like an old lady's will with a maze of codicils. The task of revision required a study of every detail of the system. Most important of all, it required something like statesmanship to secure for the game its proper place in public estimation and give club owners and players the feeling that they are public servants. *The club owners were willing enough to have rules and regulations made to control the players but they were not so ready to set their own houses in order.* The situation called for a sporting dictatorship; an official who could exercise between games the same sort of undisputed authority that belongs to the umpire during the play. Judge Landis, for a number of reasons, was the obvious man for the job and he was fortunately willing to take it. After protracted conferences and much correspondence the whole system was recast; every contract was redrawn and wholesome declarations of policy were exacted from all concerned. The declaration signed by all the club owners in January of 1921 was as follows:

"'We, the undersigned, earnestly desirous of insuring to the public wholesome and high class baseball, and believing that we ourselves should set for the Players an example of the sportsmanship which accepts the umpire's decision without complaint, hereby pledge ourselves loyally to support the Commissioner in his important and difficult task; and we assure him that each of us will acquiesce in his decisions even when we believe them mistaken and that

we will not discredit the sport by public criticism of him or of one another.'

* * * * * *

"Both Johnson and Judge Landis heartily approved and Organized Baseball thereafter found less quick water in the channel.

"There still remained the overhanging cloud represented by the litigation which had now reached the Supreme Court of the United States. While I was confident of the ultimate outcome, I awaited the third and final round of the fight with no little anxiety. * * * I argued with much earnestness the proposition that personal effort not related to production is not a subject of commerce; that the attempt to secure all the skilled service needed for professional baseball is not an attempt to monopolize commerce or any part of it; and that Organized Baseball, not being commerce, and therefore not interstate commerce, does not come within the scope of the prohibitions of the Sherman Act. In due course the Court decided in accordance with this contention and affirmed the judgment of the court below. The opinion of Mr. Justice Holmes as it appears in 259 U. S. 207 is a model of conciseness. Conceding that the Leagues 'must induce free persons to cross state lines and must arrange and pay for their doing so' he observed that 'the transport is a mere incident, not the essential thing. That to which it is incident the exhibition, although made for money would not be called trade or commerce in the commonly accepted use of those words. As it is put by the defendants, personal effort not related to production is not a subject of commerce.'[16]" (Italics supplied.)

At this juncture, Senator Pepper put in a meaningful footnote which we quote in full:

"[16]The analogy of the practice of medicine or law at once suggests itself. In *Am. Medical Association*

v. *U. S.*, 317 U. S. 519 (1943), the Court has decided that an organization not for profit employing physicians at fixed salaries is engaged in trade. It may be that the baseball decision will be upheld as to the conduct of the individual but will in time be modified as respects the activity of the associations which exploit the service of the individual."

See also, *John W. Neville, Baseball and the Anti-trust Laws,* 16 Fordham Law Review, 208, 217-219 (1947).

From the time of the rendition of the opinion for this Court by Mr. Justice Holmes in the *Federal League Club* case, there was engendered in the minds of some that professional sports, *per se,* were some kind of freak or *sui generis* in relation to the Sherman Act and could not be interstate commerce. In short, "sport" was a defense absolute.

C.

Baseball from 1922 to 1951.

From acorns come the trees—from limited concepts come possible gross misconceptions. Baseball, organized as it is, evolved the concept that it was free of the Sherman Act, and would remain so however it might spread its activities; and this spread rested on the authority of the *Federal League Club* case, *id.*

Through the 1920's, Organized Baseball did not receive any income from radio broadcasting. By 1939, these receipts amounted in round figures to $884,500. The Major Leagues alone were then engaged in this adjunct which represented 7.3% of their income (Report, 6).

These radio broadcasts were made verbally by an announcer through a play by play description of the game as it was progressing. For the World Series, the accounts were transmitted nationally and internationally.

By the end of the next decade, television had been introduced. This supplied the means for the instantaneous transmission of the sights and sounds of the game. The Major Leagues' receipts of $3,365,500 from radio and television for 1950 amounted to 10.5% of their gross income of $32,035,500 (Report 6). By 1951, the receipts from these sources had risen to $4,561,312.50 at a minimum (*id.*) apparently about 15% of the gross revenue of the Majors for that year (Peter S. Craig, Monopsony In Man Power: Organized Baseball Meets The Antitrust Laws, 62 Yale Law Journal, 576, 610).

The conclusion had grown plain during the off-season of 1948 and 1949 that large payments were being obtained annually by the Majors from the sale of the rights to broadcast and telecast their games (*Gardella* v. *Chandler*, 172 F. (2) 402, 407), with little increased expenditure to reduce this intake from the general account of net profit (*id.*, 415).

The investigation by the Congressional Subcommittee disclosed still another source of interstate income that was entirely net profit, and had not been referred to at all in *Federal League Club* v. *National League, supra.* This is from the concessions which are leased as privileges by some of the clubs, and that accounted in 1950 for 9.2%, of the gross income of the Major Leagues. In round figures this income from the sale of merchandise such as peanuts, popcorn, hot dogs, soft drinks and beer in 1950 yielded $2,936,300 (Report 6). Harry M. Stevens, Inc., existing as a New Jersey corporation since 1942, for many years has had these sale privileges in Greater New York at The Yankee Stadium, The Polo Grounds, and Ebbets Field, and a like concession from the Red Sox at The Fenway in Boston. The Jacobs Company in Buffalo, controls like rights in the park of the Chicago White Sox in Illinois and in other Major League home grounds beyond New York, its domicile.

An additional 6.2% miscellaneous figures, (Report, 6), involve score card advertisements by national concerns, such as Canada Dry, Garcia y Vega Havana cigars, Philip Morris, and Camel Cigarettes; also Chesterfield and Lucky Strike Cigarettes. All of these are in the Giants score-card, and the list is not exhausted by Beechnut Gum, or the whiskeys: Schenley, Hunter, Three Feathers and Seagram. A portion of this 6.2% is accordingly interstate income.

The upshot of this proof is that from the bare 1950 figures, measured in monetary terms, 15% to 20% of the Major League income, at a most conservative estimate, is drawn from sources that were inconsequential or non-existent in 1922. These sources were augmented by at least 4% in 1951 by the accelerating revenues from radio and television (Report, 6; Monopsony In Manpower, 62 Yale Law Journal, supra, 610).

The 1950 ratio of 10.5% from radio and television, together with the concessions and miscellaneous items 15.4%, total 25.9%. Add the 14.1% gate receipts paid to the visiting clubs and the 2.8% receipts from exhibition games (Report, 6). This amounts to another 16% of interstate income as a minimum. Most of the exhibition games are in other states, and only 44 of the Major League's annual 1,232 scheduled games are intrastate; those between the National League Clubs of New York and Brooklyn and the corresponding 22 in Pennsylvania between Pittsburgh and Philadelphia. Whether the 16% be used as a comparison with, or is added to, the 25.9%, or the major portion thereof, it will be seen that the interstate activities stand out as substantial, and have increased since 1950.

We are, therefore, prepared to prove that the Major Leagues' income for 1950 from merely two interstate sources exceeded 25% of the gross; that in 1951, the increase of the gross income from radio and television was more than a third over that of the preceding year (Report,

6), lending assurance to the conclusion interstate income exceeded 30%. By 1953 the radio and television income to organized baseball in the Major Leagues, comes to 25% of the gross revenues. Regardless of how these totals are assembled, the ratio of radio and television income to the gross, even without the other revenues derived undoubtedly by Organized Baseball from the remaining interstate sources, is sufficient to bring the activities of the professional game under the interstate commerce clause. Whether radio and television alone or added to the other interstate activities, furnished sufficient income to color the game as a whole with an interstate character, was the test laid down for the application of the Sherman Act by Judge Hand (*Martin* v. *National League Baseball Club*, 174 F. 2d 917, 918; *Gardella* v. *Chandler*, 172 F. 2d 402, 408). Judge Frank suggests that this income from radio and television need only be substantial (*Id.*, 414-415; *Martin* v. *National League Baseball Club*, 174 F. 2d *supra*, 918).

Organized Baseball has become an integrated portion of American commercial life through the national advertising industry. In 1951, credible statisticians estimated that 69,000,000 persons listened to one or more of the World Series games (Report, 12). Equally creditable estimates for 1952 led to the conclusion that 53,000,000 listeners heard one or more of the 1952 World Series games over the radio and that this number exceeded the television audience by 44% (Billboard, October 25, 1952, p. 6). Prognostications based upon recent surveys from this same source indicate that 60,000,000 persons will see one or more of the 1953 World Series games on television, apart from radio. This evidence is admissible. It is based upon widely understood commercial usage (*United States* v. *88 Cases More Or Less, etc.*, 3 Cir. 187 F. 2 967, cert. den. 342 U. S. 861; *Household Finance Corp.* v. *Federal F. Corp., D. C. Arizona*, 105 F. Supp. 164, 166; *People*

v. *Franklin National Bank*, 200 Misc. 557, 105 N. Y. S. 2d 81 [reviewed on other grounds, 181 App. Div. 757; 305 N. Y. 453]).

1922 vs. 1953.

Baseball has become the most important single element in the spring-summer broadcasting industry (Broadcasting Telecasting (The Newsweekly of Radio and TV), April 6, 1953, page 31: "Baseball's $35 Million Radio TV Package"). This reliable industrial publication indicates likewise that the income of the Major Leagues from television alone during the current season was $3,000,000 and that almost $5,000,000 more was received for radio rights. These sums are independent of the World Series. The Sporting News, April 15, 1953, front page, reinforced the accuracy of the foregoing figures from these interstate activities, which are therein referred to as existing in their adolescent stages. The World Series in addition to furnishing Organized Baseball with an independent source of income from radio and television has aided one manufacturer to obtain or reacquire national and international markets of its own (Gillette Looks Sharp Again, Fortune, June 1952). The higher Minor Leagues during the current season have begun to share in the profits from radio and television to an extent that raises the total income of the professional game, exclusive of the World Series, from $12,000,000 to $15,000,000 (Broadcasting Telecasting, *supra*, April 6, 1953, p. 31). Between its survey and The Sporting News, April 15, 1953, page 30, it appears that the Major League sponsors include 14 breweries, 3 cigarette or tobacco companies and three gas and oil companies. A similar predominance of brewers is included in the Minor League roster of sponsors (The Sporting News, April 15, 1953, p. 31; Broadcasting Telecasting, April 6, 1953, *supra*, p. 31). All of these advertisers, irrespective of the nature of their prod-

ucts, are interstate in their activities; and their resort to professional baseball is designed to affect interstate commerce through advertising.

The importance of Organized Baseball as an advertising medium particularly for the sale and distribution of beer, has attained such a high level of industrial moment that August A. Busch, Jr., the head of Anheuser Busch, purchased on its account last February for $3,750,000, of which $2,500,000 was cash, the entire St. Louis Cardinal organization with its far spread Minor League affiliates, The Farms Clubs ("The Cardinals Strike It Rich", Saturday Evening Post, June 27, 1953).

Mr. Busch, the present head of an enterprising and widely experienced family and organization in the art or practice of advertising and publicity, renamed the Cardinals' home park Budweiser Field. Upon objection by Baseball Commissioner, Ford C. Frick, the name instead became Busch Field (*id.*). It may be noted in passing that the entire transaction was condemned by the President of The Women's Christian Temperance Union (*id.*).

Television has had the overall effect of swelling attendance records to unprecedented heights. The estimates for the eleven years beginning with 1939—when television was introduced largely on an experimental basis in New York—through 1949, establish plainly that professional baseball aroused an interest among the public at large that had never before been attained (Jerry N. Jordan, "The Long Range Effect of Television and Other Factors on Sports Attendance", pp. 62-65). According to this study (p. 51) Major League attendance which had barely exceeded ten million persons between 1936 and 1939 was approximately twenty million each season in the latter part of the 1940's (pp. 62-63). By 1950 Organized Baseball was well on its way to the goal of drawing one admission per population where baseball was played (*e. g.*, a town of

300,000 drawing 300,000 paid admissions per season) (*id.*, 65).

This backlog of popular favor for professional baseball underlies its present and steadily accelerating industrial role for advertising. TELEPULSE published monthly by THE PULSE INC., in New York City reveals the mounting influence of this role in the Greater New York area. This area includes the City of New York, Nassau and Suffolk Counties, Connecticut and Northern New Jersey. The actual reach of WPIX TV from the top of The Empire State Building has a customary radius of 75 miles and its actual extent covers lower Massachusetts on the northeast to Eastern Pennsylvania on the southwest. Its rating according to TELEPULSE is 10 for baseball games played during the day. This means 10% of the 3,550,000 television sets within the Greater New York area. Two and one half persons are estimated as watching the 355,000 sets that receive the sights of the games. For baseball, the number of watchers at bars and grills denotes that the 10 rating is the equivalent of an audience of 1,000,000 at daytime weekly games.

During night games, the Yankees and Browns on August 1, had a rating of 12.5; the Yankees and Tigers on August 4, 11.5. However, the five time a week day game during this month showed that The Yankees were the most popular program on television, exceeding "Howdy Doody" by Bob Smith with its emphasis for juveniles.

On July 1, the night game at Ebbets Field in Brooklyn over WOR TV rated 16.9; the Dodgers v. Giants July 10, arrived at 18.5. Community antenna permit the income of the clubs to be augmented by ancillary wires which transmit the telecasts to viewers beyond the areas that are reached by the stations.

Radio has comparable audiences and The Yankees, Dodgers and Giants have individual networks.

The conditions in the Metropolitan District are paralleled throughout the nation and in the larger Canadian cities. This is substantial national and international coverage. Millions of people are affected by the games and the advertised products. In 1922, this was nonexistent.

POINT II

The operation of the farm system was not in effect in 1922. It is commerce; it is interstate commerce.

A.

A farm system is a chain of minor league clubs owned or controlled by a major league club.

Such a system operated for profit or for training directly affects the players in their profession. They afford the Major League clubs the power of keeping the players for many years in an apprenticeship status. They are unilateral channels stretching into many states and into international areas.

In this connection the facility with which television has been brought within the last few years into the Minor League cities threatens seriously to destroy the Minor Leagues, as a result of the preference on the part of the fans to watch Major League games over television. The Senate, however, has so far failed to act on the bill [S. 1396] introduced by Senator Edwin C. Johnson of Colorado, President of the Western League. The Report accompanying this bill was submitted to the 83rd Congress, 1st Session, Calendar No. 389, Senate Report No. 387. In its conclusion, this report states in part (12):

> "The minor league baseball clubs comprise the backbone of small business in the baseball industry. Minor league baseball clubs are the keystone of the

entire baseball structure; without the minor leagues this structure will collapse."

On the other side of the fork, the Major League owners have persisted in their command over the Minor Leagues through the farms. These farm activities have been created by Organized Baseball since 1922. The Major League owners have evolved a new method of operation by running in effect training schools for Minor League players. This is the farm system. It was invented by Mr. Branch Rickey when he was the Manager of the St. Louis Cardinals in the early 1920's and its birth and growth may be found as they are described in Report of the Subcommittee on Study of Monopoly Power (Report, 59, 62-74). Mr. Craig states further (Monopsony In Man Power, 62 Yale Law Journal, *supra*, 596): "By the end of the 1952 season, major league clubs controlled 175 of 319 clubs in the minor leagues." The ratio of expenditure in maintaining the farm clubs as training schools for the parent club (*id.*, 597-598) colors the whole of the activities of Organized Baseball with an interstate character. The clubs with the most money control the most players (*id.*, 597) and clearly wield a monopoly within a monopoly. This is beyond anything Senator Pepper attempted to justify when he convinced the Court of Appeals in the *Federal League Club* case that the Major League club only had control of 22 players (*National League, etc.* v. *Federal Baseball Club*, 269 Fed. 681, 687, 688; see Bernard C. Gavit, The Commerce Clause of the United States Constitution (1932) § 75, p. 144).

A brief discussion of this farm system follows: A Major League Club obtains control of one or more Minor League Clubs by corporate stock purchase or through so-called "working agreements." These Minor League Clubs are then used as schools to train players for promotion to the parent club practically on demand. Surplus material

is bartered, exchanged or sold to other clubs in Organized Baseball. The players are in any event kept in a protracted state of apprenticeships through the reserve clause.

It should be noticed that under the reserve clause the players, once signed by any team, are forced to remain with that team after termination of their initial contract. A player on a farm club, even without a contract, cannot play for another team outside of the parent Major League Club and its subsidiaries. Consequently, since 1922, the farm system has led to an interstate and international school system. Each one of the 16 Major League Clubs operates its own separated compartment of this system (Report, 187). Since tax losses have become a prominent part of our economy, the players are carried as assets in a property sense with a dollar valuation, and are depreciated. The very nature of the player's status is that of a chattel shunted around from team to team at the will of his master under the farm system.

In the era of the National Commission, before the rise of the farm system, this status of the players was described by the New York Courts in separate opinions covering different issues for the respective players involved (*B. B. P. Fraternity, Inc.* v. *Boston Am. L. B. B. Club*, 166 App. Div. 484, 487, aff'd 221 N. Y. 704; *American League Baseball Club* v. *Chase, supra*, 86 Misc. 441). The state of the common law in the first two decades of the present century undoubtedly actuated the National Commission in its efforts to enforce "the farming ban" expressed in Article VI, Section 4, of the National Agreement (Report, 44-46). Senator Pepper's description of his attempt to get matters down on paper in a fair way has been described. But the "Farms" arose thereafter; the authority of Judge Landis was insufficient to stop the growth of this system (Report, *supra*, 62-74).

Palpably the issue raised under the interstate commerce clause by the relation of the present farm system to the Major Leagues was not before this Court in the *Federal League Club* case. If any doubt can possibly exist on this point it will be dispelled by reading the argument set forth by counsel for Organized Baseball in the brief of the defendants in error (pp. 64-65). This stated explicitly that no club in the Major Leagues had under "reservation" more players than it needed. This argument confirmed the testimony of Commissioner Herrmann (Record on Appeal, f. 692) which the Court of Appeals had accepted (*National League, etc.* v. *Federal League Club of Baltimore*, 269 Fed., *supra*, 687, 688).

As the farm system was not before this Court in the *Federal League Club* case, we submit that the facts in connection with this operation of Organized Baseball would place Organized Baseball in the concept of the interstate commerce clause under the Correspondence School cases, of which *International Text Book Co.* v. *Pigg*, 217 U. S. 91, 107, is the most comprehensive.

The holding company cases in which unified control was divested under the Sherman Act are also pertinent. *North American Co.* v. *S. E. C.*, 327 U. S. 687 regarded them as authoritative (*id.*, 707; *Northern Securities Co.* v. *United States*, 193 U. S. 197; *Standard Oil Co.* v. *United States*, 221 U. S. 1; *Continental Ins. Co.* v. *United States*, 259 U. S. 156). Obviously, the farm system of Organized Baseball was not then considered by this Court in the contemporary reference to the *Federal League Club* case (327 U. S., *supra*, 694). The principle against vertical integration emanating from the Sherman Act in its application to moving picture companies is equally applicable to condemn the farm system (*United States* v. *Griffith*, 334 U. S. 100; *Schine Theatre* v. *United States*, 334 U. S. 110; *United States* v. *Paramount Pictures, Inc.*, 334 U. S. 131;

United States v. *Crescent Amusement Co.*, 323 U. S. 173; *Monopsony In Manpower*, 62 Yale Law Journal, *supra*, 594-598). The farm system, totally apart from the broadcasting and telecasting activities of Organized Baseball, it is submitted, is interstate commerce under the Sherman Act (*Ring* v. *Spina*, 2 Cir., 148 F. 2 647; Frank, J., in *Gardella* v. *Chandler*, 172 F. 2 *supra*, 409-410). Petitioner's injury arises directly from this farm system of Organized Baseball (*Mandeville Farms* v. *Sugar Co.*, 334 U. S. 219, 234), and the reserve clause monopoly over manpower.

POINT III

The Mexican activities of Organized Baseball demonstrate that the Federal League Club case is not *stare decisis* of the present day baseball situation.

Organized Baseball's activities have further encompassed the Mexican League situation. In 1946, certain players, including Mr. Gardella, were not under any contract, but "belonged" under the reserve clause to particular clubs in Organized Baseball. Mexico, being baseball-minded, signed these Major League players indiscriminately. Among them was Mr. Sal Maglie. Upon going to Mexico, these players were *barred* from Organized Baseball for five years. This meant that they could not play for any team in the United States, Major or Minor, even in an exhibition game. The blacklist was complete and *effective*.

If a team violated this edict, it was subject to blacklist in its League, including all the participating players on both clubs. These American players on going to Mexico were in fact called "outlaws." This situation precipitated *Gardella* v. *Chandler*, 172 Fed. 2d 402.

After three years of suspension, the players were permitted to return to the clubs which held them under

reserve. Commissioner Chandler had meanwhile made a secret agreement with the Mexican League that it would not sign any more American players, "under reserve"; that is, whether the American players were with or without a contract; and similarly, he covenanted on the part of Baseball that American clubs could not sign Mexican players under "reservation."

When Mr. Corbett did sign Mexican players, this secret agreement was enforced against him, and he was inflicted with severe penalties and denied the right to sign Mexican players even those not under contract with any one else. Petition for Certiorari *Jack Corbett et ano.* v. *Albert B. Chandler, et al.*, granted May 25, 1953: 345 U. S. 963.

These further activities of Organized Baseball were certainly not before Mr. Justice Holmes and were not covered in any respect by the circumstance of wire service, and have nothing to do with wire service.

They are interstate and international commerce, affirmatively and negatively.

In the affirmative sense, by the dealing, selling and the control of the players across state lines. In the negative sense, by the use of the blacklist to prevent professional baseball players from making contracts for their services across state lines and international boundaries. And also by blacklisting owners for making contracts with players across state lines and international lines.

POINT IV

Petitioner submits that *Gardella* v. *Chandler, supra,* reaches the sound and correct conclusion that Organized Baseball is presumptively trade and commerce under the Sherman and Clayton Acts.

The Court of Appeals for the Sixth Circuit in the case at bar relied upon the decision of this Court rendered in the *Federal League Club* case of 1922. This decision was made many years before radio and television provided any income whatsoever for Organized Baseball. In 1929, while this condition still existed (Report, 6) The National League and The American League received the respective sums of $20,614.22 each from their separate contracts with the Western Union Telegraph Company (Hearings, 1327, 1411). Apparently, these sums were never exceeded (*Ibid.*, 1339, 1425). Unlike radio and television, this wire service was not a source of competition on the part of industrial or commercial advertisers. The *Federal Baseball Club* case (Record on Appeal, ff. 442-447), shows that this service was the source of $18,000 for The National League from 1913 to 1917, inclusive, and never ran to any individual club. Under these circumstances, it is impossible to add to the cogency of Judge Hand's disregard of this factor in *Gardella, supra,* particularly when as he points out, it was never mentioned by Mr. Justice Holmes. Furthermore, counsel for the Leagues in 1922 did not consider that the wire service involved the question as to the effect of the direct transmission of the sights and sounds of the game by diffusion from a central source under *International Textbook Company* v. *Pigg,* 217 U. S. 91 (Brief of defendants in error, pp. 52-53). In short, it was conceded that wire service did not involve sights and sounds, which might then have meant interstate commerce.

The brunt of our argument is summarized:

1. As explained above, the facts surrounding the administration of Organized Baseball have changed to make it interstate commerce within the rationale of the following cases:

Lorain Journal v. *United States*, 342 U. S. 143, 151-152;
Associated Press v. *United States*, 326 U. S. 1, 14, 19;
United States v. *South-Eastern Underwriters Assn.*, 322 U. S. 533;
Associated Press v. *Labor Board*, 301 U. S. 103;
Anderson v. *Shipowners Assn.*, 272 U. S. 359;
Gardella v. *Chandler*, 172 F. (2d) 402; see opinion of Goddard, J., implying an anticipation of reversal, 79 F. Supp. 260;
Notes on *Gardella* v. *Chandler*, *id.*, 62 Harvard Law Review, 1240; 1 Syracuse Law Review, 148;
Marienelli v. *United Booking Offices*, 227 Fed. 165, 170-171.

2. Radio and telecasting in themselves would be interstate commerce:

Lorain Journal v. *United States*, 342 U. S. 143;
National Broadcasting Co. v. *United States*, 319 U. S. 190, 198-199, 223-224;
Martin v. *National League Baseball Club*, 174 F. (2d) 917;
Gardella v. *Chandler*, 172 F. (2d) 402; 174 F. (2d) 919.

3. The sale of interstate advertising rights is interstate commerce.

Times Picayune v. *United States*, 345 U. S. 594, 602, and note;
Stevens Co. v. *Foster & Kleiser*, 311 U. S. 255;
Indiana Pub. Co. v. *Prairie Farm Pub. Co.*, 293 U. S. 268.

4. Organized Baseball is engaged in both activities, 2 and 3, and a major and potentially increasing proportion of its income is derived from these sources. These factors in combination constitute interstate commerce:

Times Picayune v. *United States*, 345 U. S. *supra*, 602, and note;
Lorain Journal v. *United States*, 342 U. S. 143;
United States v. *Real Estate Board*, 339 U. S. 485.

5. The dominion of Organized Baseball over the broadcasting and telecasting of its games, and its dominion over the player market, joined together, give it substantial resultant control over segments of industrial advertising, to constitute interstate trade and commerce under the Sherman Act.

Lorain Journal v. *United States*, 342 U. S. 143 is authoritative in confirming the control of Organized Baseball over broadcasting and telecasting for advertising purposes under the Sherman Act; Organized Baseball controls absolutely the personal services of its players in the channels of interstate commerce (*United States* v. *Real Estate Board*, 339 U. S. 485, 491; *cf.*, *United States* v. *Oregon Medical Society*, 343 U. S. 326) in selling the rights to broadcast and telecast the games (see *Fisher's Blend Station* v. *Tax Com'n.*, 297 U. S. 650, 655; *Pantomimic Corporation* v. *Malone*, 238 Fed. 135).

The regulation of personal services under the commerce clause generally has been greatly enlarged since

1922 (*New York, N. H. & H. R. Co.* v. *Nothnagle*, 346 U. S. 128, 130-131; *Alstate Constrction Co.* v. *Durkin*, 345 U. S. 13; *United States* v. *Darby*, 312 U. S. 100) and specifically under the Sherman Act (*Federal Trade Commission* v. *Motion Picture Adv. Co.*, 344 U. S. 392; *United States* v. *Real Estate Board*, 339 U. S. 485; *United States* v. *Women's Sportswear Mfrs. Assn.*, 336 U. S. 460; *American Medical Assn.* v. *United States*, 317 U. S. 519; *Atlantic Cleaners & Dyers* v. *United States*, 286 U. S. 427).

The impact of the sale of broadcasting and telecasting rights upon commerce through the utilization of the personal services of performers, regardless of the label of the transaction which effects this result, is within the Sherman Act (*Federal Trade Commission* v. *Motion Picture Adv. Co.*, 344 U. S., *supra*, 397). This authority emphasizes that common law doctrines do not arrest the scope of the commerce clause (*Sunshine Coal Co.* v. *Adkins*, 310 U. S. 381, 393-394; Mr. Justice Cardozo in *Carter* v. *Carter Coal Co.*, 298 U. S. 238; 324, 327-328) nor of the Sherman Act; (*Swift and Company* v. *United States*, 196 U. S. 375, 398).

The localized nature of the germanating transaction is immaterial when the commercial structure of the nation is involved (*Oklahoma* v. *Atkinson Co.*, 313 U. S. 508, 526; *Wickard* v. *Fillburn*, 317 U. S. 111) and monopoly is thereby consummated (*Mandeville Farms* v. *Sugar Co.*, 334 U. S. 219).

We submit that Organized Baseball has dominion internationally under the Sherman Act (*Timken Co.* v. *United States*, 341 U. S. 593) and within the foreign commerce clause generally (*Steele* v. *Bulova Watch Co.*, 344 U. S. 280). Its national dominion is clear under the Sherman Act (*American Tobacco Co.* v. *United States*, 328 U. S. 781; *United States* v. *Aluminum Co. of America*, 148 F. 2d 416).

This dominion is exercised over interstate advertising presently and potentially (*Times Picayune* v. *United States*, 345 U. S. 594; *Stevens Co.* v. *Foster & Kleiser*, 311 U. S. 255; *Indiana Pub. Co.* v. *Prairie Farm Pub. Co.*, 293 U. S. 268; note on *Gardella* v. *Chandler*, *supra*, Organized Baseball is held to be commerce within the meaning of anti trust acts, 1 Syracuse Law Review, 148).

6. It is to be noticed that under all of the decisions, Organized Baseball has been successful in having itself declared as the property owner of the broadcasts:

Pittsburgh Athletic Co. v. *K. Q. V. Broadcasting Co.*, 24 F. Supp. 490;

Mutual Broadcasting System, Inc. v. *Muzak Corp.*, 177 Misc. (N. Y.) 489;

Matter of A. E. Newton, 2 F. C. C. 281, 284;

Comment, Unfair Competition and Exclusive Broadcasts of Sporting Events, 48 Yale Law Journal 288, 297 *et seq.*;

Communications Act of 1934, as amended, 47 U. S. C. A. Sec. 325(a);

Socolow, The Law of Radio Broadcasting, I, 313, note 6; II, 803-804, 806, note 45, 919-920; 954, 960-961;

Moser & Lavine, Radio and The Law, 126-128).

7. It is our argument from the foregoing situation that the present set-up of Organized Baseball falls squarely within the definition of interstate commerce under the Sherman Act by reason of its expansion into the broadcast and advertising fields (*United States* v. *Masonite Corp.*, 316 U. S. 265, 280) and this without any substantial increase in overhead (*Swift and Co.* v. *United States*, 286 U. S. 106, 115).

Conclusion.

The *Martin* and *Gardella* cases antedated by two years the investigation of Organized Baseball by Congress. Although the circumstances were not touched upon either at the Hearings or in the Report, the television system by 1951 had been completed or virtually completed from coast to coast. Its effect is sharply accentuated by the data prepared by the Subcommittee. Whereas in 1950, the paid attendance for Major League games during the season was 17,462,977 and in 1951, 16,213,626, with the respective totals 17,705,113 and 16,607,678 arising from greater attendance at the All Star and World Series games in the later year, the seasonal Minor League attendance dropped from an estimated 34,533,000, in 1950 to 27,519,000 in 1951 (Hearings, 1616). Meanwhile the receipts of the Major League clubs for radio and television increased from $3,365,500 in 1950, 10.5% of their total revenue, to $4,561,312.50 as a minimum (Report, 6). The total attendance for the Major and Minor Leagues of 52,238,000 in 1950 declined to 44,127,000 in 1951. Thus, while Major League receipts from radio and television went up between seasons by over 33⅓%, Minor League attendance dropped by approximately 20%. Income has gone up; attendance down. Therefore, the difference has been made up by broadcast and telecast activities. The Congressional Report shows a legislative finding, upon an exhaustive review of the facts underlying the present administration of Organized Baseball, to establish that the respondents are substantially engaged in interstate commerce. Congress does not have to reenact the Sherman Law to confer jurisdiction over the case at bar upon the Federal Courts. That Law and the commerce clause do not require the reinforcement of a constitutional amendment to include professional sports and baseball most conspicuously.

The judgment below should be reversed and the cause remanded for trial.

Respectfully submitted,

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